

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*Proc 2*

*19, 702*

FILE: B-194538

DATE: July 10, 1979

MATTER OF: A+P Surgical Co., Inc.

*DLG02099*

*[Protest Alleging Solicitation Impropriety]*

**DIGEST:**

Protest that clause in 100-percent small business set-aside solicitations, permitting bidders to offer items produced or manufactured in Great Britain and Northern Ireland, circumvents intent and purpose of small business set-aside is based on alleged patent solicitation impropriety. Protest is untimely, since such protests must be filed before bid opening date and this protest was not filed until after bid opening.

By letter dated April 3, 1979, A+P Surgical Co., Inc. (A+P), protested the award of any contracts to Medical Devices, Inc. (Medical Devices), under invitations for bids (IFB) Nos. DLA-120-79-B-0114, -0618, and -0914, issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania. *DLG02098*  
*AGC0088*

The solicitations were total small business set-asides. They also contained a "Notice of Potential Foreign Source Competition" (clause C76), which stated that bids offering items produced or manufactured in Great Britain and Northern Ireland would be evaluated without application of the price differentials and import duties normally applied to products of foreign origin under the Buy American Act.

A+P argues that clause C76 allows the requirements for small business set-asides to be circumvented, by permitting the use of foreign manufacturing facilities, and that the awardee, Medical Devices, is using a foreign manufacturer as part of its production process, thus circumventing the small business requirements.

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), provides, in part, that:

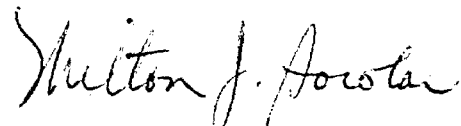
*~~005823~~*

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

Since both the notice of small business set-aside and clause C76 were in all three solicitations, the basis of A+P's protest was apparent from reading the solicitations. Therefore, to be timely, A+P's protest would have to have been filed prior to the dates for bid opening in each solicitation, November 9, 1978, January 20, 1979, and March 7, 1979. A+P's protest was not filed until April 5, 1979, and, therefore, is untimely.

A+P contends that its protest is timely because it could not protest until it had discovered, pursuant to the Freedom of Information Act, that Medical Devices was using forgings manufactured in Ireland. According to A+P, its protest was filed within 10 days of receipt of that information. The basis of A+P's protest, however, is that the solicitations permitted bidders to do exactly what Medical Devices did. A+P did not need to know that Medical Devices or any other bidder in fact used clause C76 in order to file its protest.

Accordingly, the protest is dismissed.



Milton J. Socolar  
General Counsel